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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,176

06/30/2005

Gerhardus Wilhelmus Lucassen

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08/18/2008

PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
595 MINER ROAD  
CLEVELAND, OH 44143

EXAMINER

CHENG, JACQUELINE

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/541,176	<b>Applicant(s)</b> LUCASSEN ET AL.	
	<b>Examiner</b> JACQUELINE CHENG	<b>Art Unit</b> 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/30/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Izatt (US 6,002,480). Izatt discloses an OCT device which comprises all the structural limitations of the apparatus claims of a light source (excitation system, fig. 5 element 50), a beam splitter (beam separation unit, fig. 5 element 54), an image generator (monitoring system, fig. 5 element 30, col. 21 line 36-39), a detector (fig. 3 element 74), a processor (control unit, fig. 5 element 100), and bandpass filters. The other limitations in the apparatus claims comprise language that suggests or makes optional. These statements of intended use (“for” statements) and “adapted to” statements does not limit a claim to a particular structure does not limit the scope of a claim.

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Richards-Kortum (US 6,370,422 B1). Richards-Kortum discloses a confocal imaging device which comprises all the structural limitations of the apparatus claims of a radiation source (excitation system, fig. 2 element 32), a beam splitter (beam separation unit, fig. 2 element 16), a pinhole aperture (another beam separation unit, fig. 2 element 26), a monitoring system including a confocal scanning microscope (fig. 2 elements 42, 44, 46, 48, fig. 12, a detector (fig. 2 element

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28), a processor (control unit, fig. 12 element 76), a filter (fig. 5 element 56) and a polarizing spectral agent (col. 4 line 66-col. 5 line 1). The other limitations in the apparatus claims comprise language that suggests or makes optional. These statements of intended use (“for” statements) and “adapted to” statements does not limit a claim to a particular structure does not limit the scope of a claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Izatt. Izatt teaches a source beam which excites a target region and a gated detecting means that separates the elastic backscattering from the inelastic backscattering. An image is created from the returned radiation to diagnose the target area (col. 4 line 15-57, col. 5 line 53-col. 6 line 22). Izatt does not explicitly disclose defining a region of interest in the image and detecting the scattered radiation from this region of image however it would be obvious that the system of Izatt defines a region of interest in the image. As Izatt images a region, it would be obvious that certain regions would be chosen as a target area depending on the previous image taken. The image provides a reference point for determining if the correct area is being imaged or if the focal spot size or depth of focus needs to be changed. The OCT system comprises an adjustable focal length that allows for these adjustments to be made (col. 18 line 49-53).

*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE CHENG whose telephone number is (571)272-5596. The examiner can normally be reached on M-F 10:00-6:30.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/  
Supervisory Patent Examiner, Art Unit  
3737

JC